



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

**Prepared by: Alicia Giudice, Director
Alexis Captanian, Housing Analyst
Jacob Noonan, Housing Manager**

City Manager Approval: _____ 

TOPIC: 999 THIRD STREET – EDEN HOUSING/VIVALON HEALTHY AGING CENTER
SUBJECT: APPROVE STAFF RECOMMENDATION FOR TERMS OF A BELOW MARKET RATE (“BMR”) AGREEMENT IMPOSING AFFORDABILITY RESTRICTIONS ON THE PROPERTY LOCATED AT 999 THIRD STREET BEING DEVELOPED AS THE VIVALON HEALTHY AGING CENTER

EXECUTIVE SUMMARY:

On March 23, 2020, the City Council adopted Resolution No. 14776, which granted Environmental and Design Review and other land use entitlements to applicants BioMarin, Vivalon and Eden Housing for development of property owned by BioMarin at 999 Third Street as a research and development building for BioMarin and a 67-unit 100% affordable senior housing and healthy aging center for Vivalon and Eden Housing. A condition of approval of the Vivalon/Eden Housing project requires that prior to the issuance of a building permit, a City-approved Below Market Rate Agreement (“BMR Agreement”) must be recorded against the property, restricting the rent for the residential units in the project to affordable levels. The City’s typical BMR Agreement restricts “affordable units” to low-income levels at occupancy according to percentage of the Area Median Income (AMI) as determined by the United States Department of Housing and Urban development (HUD).

In connection with financing requirements imposed on the Vivalon/Eden Housing project by their lenders, the City is in the process of negotiating a slightly different form of BMR Agreement that would phase-in affordability restrictions as follows:

- Phase 1: During construction, the project would be subject to affordability restrictions at 80% Area Median Income (AMI) using the rent schedule established by the California Tax Credit Allocation Committee (TCAC), which would not meet HUD’s low-income standard.
- Phase 2: At occupancy and thereafter for the 55-year term, the project would be subject to affordability restrictions at very low and low income rents established by TCAC, which would meet HUD’s low-income standard and the requirements for density bonuses granted pursuant to the State Density Bonus Law and the City’s Municipal Code. Specifically, the proposed BMR Agreement would ensure that, at occupancy following the completion of construction, the project

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

would be subject to affordability restrictions based on TCAC which will require 14 units rented at 30% AMI, 16 units rented at 40% AMI, and the remaining 36 affordable units rented at 60% AMI. For comparison, 60% AMI using TCAC is approximately 80% AMI using HUD. Therefore, the project would comply with State Density Bonus Law which allows up to 80% of the units at 80% AMI using HUD rents.

Staff recommends using this phased agreement as Staff believes this approach satisfies the City's affordability requirements and the density bonus provisions in state law, while providing the flexibility the applicants require for their financing. Therefore, Staff is seeking City Council concurrence in this approach by acceptance of this report and approval of the Staff recommendation.

RECOMMENDATION:

Accept report approving Staff's recommendation to permit a phased BMR Agreement as described in the report.

BACKGROUND:

On March 23, 2020, the City Council adopted Resolution No. 14776, which approved Environmental and Design Review and other land use entitlements to applicants BioMarin, Vivalon and Eden Housing for development of property owned by BioMarin at 999 Third Street as a research and development building for BioMarin and a 67-unit 100% affordable senior housing and healthy aging center for Vivalon and Eden Housing. Pursuant to that approval, the property was subsequently subdivided, and BioMarin conveyed a parcel at the northwestern corner of the property (now designated as 999 Third Street) to Vivalon.

Vivalon and Eden housing have agreed that Eden Housing will construct the approved building and related improvements, and that Vivalon will own the first two floors, to be occupied by the healthy aging center, and Eden Housing will own the third through fifth floors, which will hold one manager's unit and 66 affordable residential rental units for seniors. Condition 29 of the Environmental and Design Review approval required Vivalon/Eden Housing to record a City-approved BMR Agreement against their property prior to construction, restricting the rent for the residential units in the project to affordable levels.

At the time of the approvals, the governing law allowed 25 units on the project site. Prior to amendments to the San Rafael Municipal Code ("SRMC") adopted in early March of 2021, SRMC Section 14.16.030 required development projects with residential units to reserve 20 percent (20%) of the units for rental at rents affordable to and occupied by households earning "very low" and "low" income. The City has traditionally used the rent schedules maintained by the Marin Housing Authority and based on the median income for Marin County as calculated by the United States Department of Housing and Urban Development ("HUD").

Therefore, when this project was processed, to achieve the 100% affordable housing project, the housing project sponsor (Eden Housing) requested and received a density bonus under the State Density Bonus Law in California Government Code Sections 65915 et seq. The sponsor also requested two discretionary concessions/waivers which were considered major concessions and subject to SRMC Section 14.16.030.H.3.b.v, which allowed the City Council, in its sole discretion, to approve the concessions if the applicant demonstrated through a financial pro forma the concessions were needed to make the project financially feasible. The applicant provided the financial pro forma demonstrating the need for the approximate additional 130-percent bonus (in addition to the state law allowed 35-percent bonus), and the additional 4-feet of height to achieve the proposed 70-foot height for the building in order to achieve the 66 affordable units and one manager unit proposed.

ANALYSIS:

As discussed above, City Council Resolution No. 14776 approved the BioMarin/Vivalon/Eden Housing project. The Vivalon/Eden Housing project included a 67-unit affordable senior housing project. The zoning at the time allowed 25 units on the project site. Vivalon/Eden Housing requested a 35% density bonus and two concessions in exchange for meeting the City's 20% low income affordability requirements. The requested concessions included:

1. Additional units to achieve a total of 67
2. A height bonus to allow the additional height

In making the findings for approval of the project the City Council concluded that the project met the City's affordable housing requirements because they committed to 100 percent of the units as affordable or "below market rate" which was above the 20% required by the City. In addition, the applicant demonstrated that they qualified for a bonus of 35% under State Density Bonus Law by having at least 20% of the units dedicated to low income.

Environmental and Design Review Permit condition of approval 29 recognizes that the applicant effectively received and the City approved a density bonus beyond what was required by the State Density Bonus Law and also required the applicant to enter into a BMR Agreement that would commit the units as affordable to seniors at low and very low income levels. There was no indication as to the number of units to be required of each and no indication as to the source of the data to be used to qualify the units as low and very low. However, according to State Density Bonus Law, for 100% affordable housing developments, at occupancy, the rent for at least 20% of the units must meet the rent standards of Health and Safety Code Section 50053, and the remaining units may instead meet Low Income Housing Tax Credit rent standards (also known as TCAC). Health and Safety Code Section 50053 uses HUD as the source of rent standards.

The City's BMR Agreements are typically recorded right before occupancy, which is when the State Density Bonus Law requires recordation. However, in line with condition of approval 29, and because the City has approved a loan for this project, staff is requiring recordation of a BMR Agreement prior to signing off on the loan documents. Upon recordation, the lien of the BMR Agreement would be in first place, also referred to as "senior position", and will be ahead of all other financing liens and restrictions on the property.

To support the applicant in securing funding from other sources, the applicant is requesting that the City allow the affordability restrictions to be eased during the construction phase to 80% AMI using TCAC rent schedules. This would translate to approximately 100% AMI using HUD rent schedules, which is classified as moderate income rather than low income under the HUD definitions. However, as noted above, more restrictive TCAC rents (14 units rented at 30% AMI, 16 units rented at 40% AMI, and the remaining 36 affordable units rented at 60% AMI) will apply at completion of construction and prior to occupancy, which is when State Density Bonus Law restrictions must apply and when City restrictions typically apply.

Additionally, the project will include HOME funding, and subject to the HOME program's regulatory agreement a certain number of units will be restricted at affordable income levels following the HUD rent schedule, which will provide yet a deeper level of affordability. Layered on the two sets of restrictions, all affordable units in the project will receive a project-based voucher from the Marin Housing Authority. These subsidy vouchers will provide an even deeper level of affordability in the project by providing a portion of the rent paid by each tenant, allowing the project to support tenants who earn incomes lower than the 30%, 40%, and 60% AMI limit provided by TCAC.

Thus, while the proposed phased BMR Agreement is a departure from the City's usual practice, staff believes that a BMR Agreement with the proposed phasing-in of restrictions as described above is consistent with the approvals under Resolution No. 14776 and with State Density Bonus Law requirements. Since this approach will satisfy the applicant's other funding sources, staff is recommending that the City agree to this phased approach and by this report seeks the City Council's concurrence with staff's recommendation. Approval of the recommendation would be through acceptance of this report.

COMMUNITY OUTREACH:

Extensive community outreach was conducted by the applicant and the City while the project was under review and during the City approval process. The BMR Agreement satisfies a condition of that project approval.

FISCAL IMPACT:

There is no fiscal impact to the city.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Accept Report approving staff's recommendation to proceed with negotiations for a phased BMR Agreement.
2. Reject Report and direct staff to proceed with a BMR Agreement using prior procedures. This could jeopardize the project's funding.

RECOMMENDATION:

Accept the report approving Staff's recommendation to permit a phased BMR Agreement as described.